



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
4190 Washington Street, West
Charleston, WV 25313

Earl Ray Tomblin
Governor

Michael J. Lewis, M.D., Ph. D.
Cabinet Secretary

May 1, 2012

Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on the Supplemental Nutrition Assistance Program (SNAP) Administrative Disqualification Hearing (ADH) held May 1, 2012, for the purpose of determining whether you committed an Intentional Program Violation (IPV).

In arriving at a decision, the State Hearing Officer is governed by the Public Welfare Laws of West Virginia and the rules and regulations established by the Department of Health and Human Resources. These same laws and regulations are used in all cases to assure that all persons are treated alike.

Eligibility for SNAP is based on current policy and regulations. Some of these regulations state as follows: Intentional Program Violations shall consist of having intentionally: (1) made a false or misleading statement or misrepresented, concealed or withheld facts, or (2) committed any act that constitutes a violation of the [SNAP] Act, the SNAP Regulations, or any State statute relating to the use, presentation, transfer, acquisition, receipt or possession of SNAP benefits. Individuals found to have committed an act of Intentional Program Violation will be ineligible for a specified period of time determined by the number of previous Intentional Program Violation disqualifications. (West Virginia Income Maintenance Manual §20.2, and Code of Federal Regulations - 7 CFR §273.16).

The information submitted at the hearing supports that you intentionally provided false information about your household's circumstances in order to receive SNAP benefits for which you were not entitled.

It is the decision of the State Hearing Officer to **uphold** the Agency's proposal to apply a one (1) year SNAP disqualification penalty against you based on the determination that you committed an Intentional Program Violation. Your disqualification penalty period will begin June 1, 2012.

Sincerely,

Cheryl Henson
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review / Natasha Jemerison, Kanawha DHHR

WEST VIRGINIA DEPARTMENT OF HEALTH AND HUMAN RESOURCES
BOARD OF REVIEW

IN RE: -----,

Defendant,

v.

ACTION NO.: 12-BOR-868

**WEST VIRGINIA DEPARTMENT OF
HEALTH AND HUMAN RESOURCES,**

Movant.

DECISION OF STATE HEARING OFFICER

I. INTRODUCTION:

This is a report of the State Hearing Officer resulting from an Administrative Disqualification Hearing for ----- . This hearing was held in accordance with the provisions found in Chapter 700 of the West Virginia Department of Health and Human Resources' Common Chapters Manual. This hearing was convened on May 1, 2012.

II. PROGRAM PURPOSE:

The purpose of the Supplemental Nutrition Assistance Program (SNAP) is to provide an effective means of utilizing the nation's abundance of food "to safeguard the health and well-being of the nation's population and raise levels of nutrition among low-income households." This is accomplished through the issuance of benefits to households who meet the eligibility criteria established by the Food and Nutrition Service of the U.S. Department of Agriculture.

III. PARTICIPANTS:

-----, Defendant

-----, Defendant's witness

Natasha Jemerison, Department representative

Presiding at the Hearing was Cheryl Henson, State Hearing Officer and a member of the State Board of Review.

IV. QUESTION TO BE DECIDED:

The question to be decided is whether the Defendant committed an intentional program violation and should be disqualified for one year from participation in SNAP.

V. APPLICABLE POLICY:

7 CFR § 273.16 USDA Code of Federal Regulations
Common Chapters Manual Chapter 700, Appendix A
West Virginia Income Maintenance Manual §1.2, 9.1.A.2.h and 20.2

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- M-1 Benefit Recovery Referral screen from the Department's computer system dated April 25, 2012
- M-2 West Virginia Income Maintenance Manual §1.2, E
- M-3 Food Stamp Claim Determination Form and supporting documentation
- M-4 Code of Federal Regulations 7 CFR 273.16
- M-5 SNAP application form dated June 28, 2011, and supporting documentation
- M-6 Rights and Responsibilities form dated June 28, 2011
- M-7 West Virginia WORKS application form dated August 8, 2011, and supporting documentation
- M-8 Rights and Responsibilities form dated August 8, 2011
- M-9 Case comments from Department's Child Support computer system and from [REDACTED] Human Services office
- M-10 West Virginia Income Maintenance Manual §2.2
- M-11 West Virginia Income Maintenance Manual §20.6
- M-12 Waiver of Administrative Disqualification Hearing form signed March 9, 2012

Claimant's Exhibits:

None

VII. FINDINGS OF FACT:

- 1) A request for an Administrative Disqualification Hearing, hereinafter ADH, was received by the Board of Review from the Department of Health and Human Resources, hereinafter Department, on March 16, 2012. The Department contends that the Defendant has committed an Intentional Program Violation, hereinafter IPV, and made a fraudulent statement or misrepresentation regarding her household composition in order to receive Supplemental Nutrition Assistance Program [SNAP] benefits, and is recommending that she be disqualified from participation in SNAP for a period of one (1) year. The Department originally sent the Defendant a notification letter and the Defendant returned (M-12) a Waiver of Administrative

Disqualification Form, IG-IFM-BR-44, indicating she wished to have an administrative hearing on the matter.

- 2) The Department contends that the Defendant intentionally reported incorrect household composition for her SNAP household during her June 28, 2011 and August 8, 2011 application interviews by falsely reporting that her daughter, -----, lived in her home when she actually lived in [REDACTED] with her grandmother.
- 3) The Department presented evidence which supports that the Defendant completed a SNAP application interview (M-5) on or about June 28, 2011, at which time she reported that her daughter lived in her household. She also reported that the child did not receive SNAP or Temporary Assistance for Needy Families [TANF] benefits from another state. She signed the application form (M-5) indicating that she understood her responsibility to report accurate and truthful information and the penalties for failure to do so. She also signed the Rights and Responsibilities form (M-6) further certifying that she understood her responsibility to report accurate and truthful information.
- 4) Additional evidence (M-7) supports that the Defendant applied for West Virginia WORKS cash assistance, hereinafter WV WORKS, on August 8, 2011, at which time she again reported that her daughter lived in her household. She signed the application form (M-7) indicating that she understood her responsibility to report accurate and truthful information and the penalties for failure to do so. She also signed the Rights and Responsibilities form (M-8) further certifying that she understood her responsibility to report accurate and truthful information.
- 5) The Department presented evidence (M-9) in the form of case comments from its Child Support Unit computer system which supports that the child has always lived with her grandmother in [REDACTED] from birth and that she has not spent an extended visit with the Defendant since birth. The comments (M-9) include that the Defendant reported to a Bureau for Child Support Enforcement [BCSE] representative during October 2009 that she “has given her child to her mother.” The comments also show the Department documented that on August 9, 2011, the Defendant applied for WV WORKS cash assistance and that the case is “pending” for September 2011. Additional case comments dated January 2012 show that the BCSE representative documented that the child “is in the custody of her grandmother” and that there was a court order for the absent parent father to pay the grandmother child support. Further, the case comments support that the Department documented a February 9, 2012 phone conversation with a case worker in [REDACTED] which states in pertinent part:

Case worker received call from worker from [REDACTED] County, [REDACTED]. She states she has in her office this date the child, ----- and her grandma ----- as they had just come from court re: the grandmother’s case with father of -----...she stated that she is the case worker for -----’s case...she wanted to call to be certain that we know that child has not ever been in the home of her mother [Defendant]. She has been with [grandmother] since birth. She wanted to be sure we knew that [Defendant] was collecting benefits from WV fraudulently...she has not had the child for an extended visit.

- 6) Additionally, the Department's evidence (M-9) supports that the Department documented on February 9, 2012, that the Defendant called the customer service center on January 30, 2012, and reported that her child had gone back to live with the child's grandmother in [REDACTED] and that her case had been pending for proof of the child living in her home since January 12, 2012.
- 7) Further, the Department's evidence (M-9) supports that the [REDACTED] Human Services office provided proof that the child has been receiving benefits in [REDACTED] during the period of time the Defendant received benefits for her in West Virginia.
- 8) The Defendant testified that her daughter was here in West Virginia from sometime around the end of May 2011 until the first part of December 2011, and that she remembers taking the child back to [REDACTED] before Christmas. She stated that she called three (3) times to report this to the Department and claims the Department took no action until her last phone call. She did not specifically state when she made the phone calls to the Department. She also stated that she did not know that her mother was receiving benefits for the child in [REDACTED]
- 9) The Defendant's witness, -----, is the Defendant's friend. She stated that she remembers that the Defendant brought the child from [REDACTED] around the beginning of May 2011, and that she had the child until the first part of December 2011. She stated that there was "some trouble" during August 2011 involving law enforcement and they tried from that point on to get the child back to [REDACTED] but were unable to do so for some time because of transportation issues.
- 10) West Virginia Income Maintenance Manual §1.2 (E) states that it is the client's responsibility to provide information about his circumstances so the worker is able to make a correct decision about his eligibility.
- 11) West Virginia Income Maintenance Manual § 20.2 (C) (2) states in pertinent part:

IPV's include making false or misleading statement, misrepresentations, concealing or withholding information, and committing any act that violates the [SNAP] Act of 1977, [SNAP] regulations, or any State statute related to the use, presentation, transfer, acquisition, receipt, or possession of [SNAP].

The individual(s) who is found to have committed an IPV is ineligible to participate in the program for a specified time, depending on the number of offenses committed.

Once an IPV is established, a disqualification penalty is imposed on the AG member(s) who committed the IPV.
- 12) Common Chapters Manual 700, Appendix A, Section B, provides that an IPV shall consist of having intentionally (1) made a false or misleading statement, or misrepresented, concealed or withheld facts, or (2) Committed any act that constitutes a violation of the [SNAP] Act, the SNAP Regulations, or any State statute relating to the use, presentation, transfer, acquisition, receipt or possession of SNAP benefits.

- 13) Common Chapters Manual 700, Appendix A, Section G, states that the State Hearing Officer shall base the determination of IPV on clear and convincing evidence which demonstrates that the household member(s) committed, and intended to commit, an IPV as defined in Section B of this Appendix.
- 14) West Virginia Income Maintenance Manual §9.1.A.2.h states:

Intentional Program Violation (IPV)

Persons who have been found guilty of an IPV are disqualified as follows:

- 1st Offense: 1 year
- 2nd Offense: 2 years
- 3rd Offense: Permanent

VIII. CONCLUSIONS OF LAW:

- 1) The policy and regulations that govern SNAP state that a SNAP Violation has occurred when an individual intentionally makes a false or misleading statement, misrepresents, conceals, or withholds facts relating to the use, presentation, transfer, acquisition, receipt or possession of SNAP benefits.
- 2) The regulations state there must be clear and convincing evidence that demonstrates the Defendant intentionally committed an IPV.
- 3) The Defendant clearly was aware of her responsibility to report truthful and accurate information and the penalties involved for failing to do so. She read and signed two applications as well as Rights and Responsibilities forms during the period in question which clearly informed her of these responsibilities.
- 4) The totality of the evidence supports clearly and convincingly that the Defendant intentionally reported that her child lived in her household when the child was living in [REDACTED] with her grandmother. The case worker in [REDACTED] is clearly documented on February 9, 2012, as stating that the child had been living with her grandmother in [REDACTED] and that she had not been living with the Defendant in West Virginia; not even for an extended visit. The evidence supports that the grandmother received welfare benefits as well as child support benefits for the child in [REDACTED] during the period the Defendant was reporting the child lived with her. The Defendant's and her witness' testimony in support of the child living with the Defendant from May 2011 until December 2011 is not supported by the documentation and is insufficient to support that the child lived with the Defendant. The Defendant provided no corroborating written evidence in support of her position. Additionally, the written evidence provided by the Department supports that the Defendant reported the child leaving her home on January 30, 2012; much later than the early December 2011 timeframe testified to by the Defendant and her witness. This calls into question the credibility of their testimony.

- 5) Therefore, the Department was correct in its determination that the Defendant has committed an IPV by reporting false information about her household composition.

IX. DECISION:

The Agency's proposal to apply a one (1) year Food Stamp disqualification penalty is **upheld**. The Defendant's disqualification penalty period will begin June 1, 2012.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 1st Day of May, 2012.

**Cheryl Henson
State Hearing Officer**